IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 122 of 1986
with
INCOME TAX REFERENCE No 189 of 1986
with
INCOME TAX REFERENCE No 19 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

KAMLA COLD STORAGE ICE FACTORY

Appearance:
MR AKIL KURESHI FOR MR MANISH R BHATT for Petitioner

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 26/12/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

All these References are at the instance of the Revenue against the same assessee in respect of different assessment years. The question referred in these

References is whether the Tribunal was right in coming to the conclusion that the cold storage was machinery used for manufacturing activity and so eligible for the investment allowance and higher amount of depreciation.

2. At the hearing of the References, Mr. Akil Kureshi, learned counsel for the Revenue submits that the controversy is concluded against the assessee in view of the decision of the Apex court in Delhi Cold Storage P. Ltd. v. Commissioner of Income-Tax. Though served, none appears for the respondent. Having gone through the above decision of the Apex Court, we find that it has been held that in a cold storage, vegetables, fruits and several other articles which require preservation by refrigeration are stored. While, as a result of long storage, scientific examination might indicate loss of moisture content, that is not sufficient for holding that the stored articles have undergone a "process" within the meaning of section 2(7)(c) of the Finance Act, 1973. In our view the same reasoning will apply with greater force while considering the question whether the stored articles undergo any manufacturing activity. Therefore, the answer has obviously to be in the negative. We accordingly answer the questions referred in each of these References to us in the negative, i.e., in favour of the Revenue and against the assessee.

The References accordingly stand disposed of.

There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(M.S. SHAH, J)

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